

## **CHAPTER 29-07**

### **PRELIMINARY EXAMINATIONS**

**29-07-01. Magistrate's duty - Testimony may be taken.** Superseded by N.D.R.Crim.P., Rules 5, 44.

**29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.**

1. Lawyers appointed to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person, when approved by the judge, must be paid by the state if the action is prosecuted in district court and by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by appointed counsel, or for whom appointed counsel without a request is considered appropriate by the court, shall submit an application for appointed defense services. For an application for appointed defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.
2. A defendant with appointed counsel, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
  - a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
  - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
  - c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family,

the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.
4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the commission on legal counsel for indigents to be used in the administration of the indigent defense system.

**29-07-02. Waiver of examination.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-03. Examination of witnesses.** If the accused waives preliminary examination, the state's attorney may cause the testimony of any witness or witnesses to be taken in writing as is provided by law, with the same force and effect as if such examination had not been waived. Such testimony must be returned by the magistrate to the district court of the magistrate's county as in other cases.

**29-07-04. Magistrate must allow accused counsel.** Superseded by N.D.R.Crim.P., Rules 5, 44.

**29-07-05. The preliminary examination.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-06. Change of place of hearing - Procedure.** Whenever a person accused of a public offense is brought before a municipal judge for examination, and, at any time before the examination is commenced, the person files with the municipal judge an affidavit stating that by reason of the bias or prejudice of the municipal judge the person believes a fair or impartial examination cannot be had before the municipal judge, the municipal judge shall transfer the action, and all the papers therein, including a certified copy of the municipal judge's docket entries, to a district judge serving the county. The state's attorney, or assistant state's attorney, in the same manner and for the same reasons as the defendant, may obtain a transfer of the action from the municipal judge before whom the action was commenced, or from the district judge to whom it has been transferred on the application of the state, in which event it must be transferred to another district judge designated by the presiding judge of the judicial district. The place of examination cannot be changed more than once by each party under this section.

**29-07-07. Adjournment - Three days limit.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-08. Disposition of accused on adjournment.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-09. Commitment for examination.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-10. Summoning of witnesses.** Superseded by N.D.R.Crim.P., Rule 5.

**29-07-11. Procedure on examination - Reading complaint.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-12. How witnesses examined.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-13. Witnesses kept separate - Exclusion during the examination of any witness.** The magistrate may exclude all witnesses who have not been examined. The magistrate also may cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

**29-07-14. Persons not excluded.** The magistrate holding a preliminary hearing, upon the request of the defendant, may exclude from the examination every person except the magistrate's clerk, the prosecutor and the prosecutor's counsel, the attorney general of the state, the state's attorney of the county, the defendant and the defendant's counsel, and such other person as the defendant may designate, and the officer having the defendant in custody, but such exclusion, and the extent thereof, is within the discretion of the court.

**29-07-15. Testimony reduced to writing - Conditions - Payment.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-16. Accused may produce witnesses after state concludes testimony.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-17. Keeping and disposition of depositions - Violation is a misdemeanor.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-18. Procedure - Accused discharged.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-19. Costs taxed when prosecution malicious.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-20. Accused held to answer.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-21. If offense not bailable defendant committed.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-22. When offense bailable.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-23. When bail not taken.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-24. Commitment - Procedure.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-25. Form of commitment.** Superseded by N.D.R.Crim.P., Rules 5.1, 58.

**29-07-26. Magistrate must deliver papers to district court.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-27. Charge investigated by magistrate if corporation appears.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-28. Appearance by corporation - Hearing - Certificate of magistrate - Procedure.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-29. Return of certificate of probable cause - Procedure.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-30. Information or indictment against corporation without preliminary hearing.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-31. Effect of failure by corporation to answer summons.** Superseded by N.D.R.Crim.P., Rule 5.1.

**29-07-32. Record of magistrate to be kept on docket.** Superseded by N.D.R.Crim.P., Rule 5.1.